

KCC 4845 (K-C 16,984)
PATENTREMARKS

Claims 66, 88, 89 and 91-95 are amended and claims 96-98 are canceled. Claims 45-46, 50-68, 76-85, and 88-95 will be pending upon entry of this amendment.

The following remarks are responsive to the Office action mailed July 21, 2005.

I. Response to Objection to the Specification and Claim Rejections under 35 U.S.C. 112

As noted in the previous Amendments B and C and D, applicants have not amended the Summary of the Invention section to be commensurate with the claim language as suggested by the Examiner. Rather, applicants agree to amend this portion of the specification after issuance of a notice of allowance indicating the final form of the claims deemed allowable by the Office.

On pages 2-4 of the Office action, the Office again restates its previous rejection based on the applicants' use of the phrase "affixed along at least a portion" in the claims. The Office maintains that the definition of "affixed" provided at page 6, lines 15-20 of the specification is contradictory to the use of the term "affixed" in the claims. The Examiner has objected to the phrase "absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis" as recited in previously considered claim 44 and generally similarly recited in claims 68, 88 and 95. More specifically, the Examiner's position continues to be that the definition of "affixed" set forth in the specification is inconsistent with two components being affixed to each other

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"at least in part" by being affixed over less than 100% of their opposed surfaces.

The Examiner continues to divorce the definition of the term affixed set forth at page 6 of the application, from the entirety of the remaining disclosure and the terms surrounding the term "affixed" in the claims. That is, the Examiner completely ignores the express disclosure of the present application in which applicants disclose that the definition of the term affixed refers to only those portions of the absorbent body that are affixed to the chassis, and that other portions of the absorbent body may not be affixed to the chassis (e.g., free to move relative to the chassis). Rather, it appears that the Examiner is reading the definition set forth on page 6, rendering a broad interpretation to the term, and then going directly to the claims and characterizing the phrase "affixed along at least a portion" as being internally inconsistent. Applicants submit that this is improper. Rather, the Examiner is charged with giving the claims their broadest reasonable interpretation *consistent with the specification*. See MPEP §2111, citing *In re Hyatt*, 54 USPQ 1164, 1667 (Fed. Cir. 2000) (emphasis added).

On page 6, line 18 of the application, the following definition of "affixed" is provided.

As used herein, "affixed" or "bonded" refers to the joining, adhering, connecting, attaching, or the like, of two elements. The two elements will be considered to be bonded together when they are bonded directly to one another or indirectly to one another.

The Office action continues to characterize the term "indirectly" as it is used in the above definition, as meaning

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that if less than all of the surface area between two elements is directly affixed, then the remaining, unaffixed portions of the surface area between the two elements are indirectly affixed. This is not the case. Rather, the term "indirectly" is used to mean that the two elements may be directly affixed to each other, or there may be an intermediate element therebetween through which the two elements are still affixed (e.g., each element being affixed directly to the intermediate element).

In view of the above, it is clear that two elements may be affixed to each other over less than 100 percent of the surface area therebetween within the definition of affixed provided in the specification. For example, as shown in Fig. 2 of the present application, the outer surface of the absorbent body is affixed directly to the inner surface of the chassis via an adhesive layer that extends across less than the full width of the absorbent body. The remaining surface area of the outer surface of the absorbent body beyond the edge margins of the adhesive layer is unaffixed to the inner surface of the chassis because they are not affixed, directly or via a third element therebetween. Accordingly, the unaffixed surface area of the outer surface of the absorbent body would be free to stretch independently of the outer cover.

There is no support found anywhere in the present application or the drawings to support the Office's characterization of the term "affixed." To the contrary, as is specifically set forth in the specification, if the entire inner surface 9 of the absorbent body 4 is affixed or laminated to the inner surface 11 of the chassis 2, then the amount of stretchable surface area of the chassis is reduced by the

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entire surface area of the inner surface of the absorbent body (specification page 30, line 28 to page 31, line 2). The attachment of the entire surface area of the absorbent body 4 to the chassis 2 would greatly inhibit the biaxial stretch of the chassis. As such, the illustrated embodiment of the application is an alternative to attachment of the entire surface area of the absorbent body to the chassis so that increased stretchability of the chassis is facilitated.

The surface area of the outer surface 9 of the absorbent body 4 is **portionally** attached to the stretchable chassis 2 by a layer of adhesive 13 (Fig. 3) that may be a continuous layer of adhesive, or a patterned layer of adhesive or by an other attachment method (specification page 30, lines 19-25). Further, the outer surface area 9 of the absorbent body 4 attached to the chassis 2 may cover **only a fraction** of the surface area of the chassis (e.g., a 4 inch by 6 inch absorbent body may be attached on a 2 inch by 4 inch rectangular area of the chassis) and **may be less than about 95%, more preferably less than about 50%, and even more preferably less than about 25%** (page 31, lines 23-28). (Emphasis added).

Contrary to the Examiner's position, the surface area of the outer surface of the absorbent body that lies against the inner surface at the lateral region beyond the ends of the adhesive layer would be free from contact with the adhesive layer and would not be affixed to the chassis in accordance with what is specifically disclosed and illustrated in the present application. There would be no element, structure, or layer (i.e., adhesive layer or any other element) between the absorbent body and the chassis at this location and therefore the absorbent body would not be affixed to the chassis either

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directly or indirectly at this region. Rather, this portion of the absorbent body would be unaffixed and free to stretch or otherwise move independently of the chassis.

Applicants submit that the Examiner must consider the entire specification and drawings as a whole in determining what is meant by "affixed along at least a portion". The definition set forth on page 6, along with the drawings and the rest of the specification together make clear the intended meaning of the phrase "affixed along at least a portion". That is, the drawings and specification are not inconsistent with the definition set forth on page 6, but rather support precisely what applicants have explained consistently throughout the prosecution of this application - that "affixed" does not preclude a portion of the absorbent body from being unaffixed while another portion of the absorbent body is affixed to the chassis.

In view of the above, applicants submit that the claims are commensurate with the specification and respectfully request that the objection to the specification and the rejection of the claims under 35 U.S.C. §112 be withdrawn.

II. Response to Rejection of the Claims

Claim 66

Claim 66 as amended is directed to a disposable absorbent article having a longitudinal axis and a lateral axis. The absorbent article comprises:

a stretchable multilayer chassis having an inner surface and an outer surface, said chassis comprising:

an elastic chassis liner defining the inner surface of the chassis and being stretchable at least laterally; and

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an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

an absorbent body having an inner surface, an outer surface overlaying the inner surface of the chassis, and longitudinal ends, the absorbent body comprising:

an absorbent core;

a tissue wrapsheet wrapped about the absorbent core; and
a surge management layer; and

an absorbent body liner secured at least in part to the chassis liner, said absorbent body being disposed between the absorbent body liner and the chassis liner with the surge management layer disposed between the tissue wrapsheet and the absorbent body liner;

the absorbent body liner extending longitudinally to the longitudinal ends of the absorbent body and having an inner surface and an outer surface facing the inner surface of the absorbent body, said inner surface of the absorbent body liner being uncovered at the longitudinal ends of the absorbent body to permit contact of the absorbent body liner with a wearer of the article at the longitudinal ends of the absorbent body, the absorbent body liner and absorbent body being sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body liner and absorbent body to permit contact of the inner surface of the chassis with the wearer of the article.

Claim 66 as amended is submitted to be nonobvious and patentable over the references of record, and in particular U.S. Patent No. 4,756,709 (Stevens), in view of U.S. Patent Nos. 6,149,638 (Vogt et al.) and 5,486,166 (Bishop et al.), in

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that the references fail to show or suggest an absorbent article comprising an absorbent body being affixed along at least a portion of its outer surface to the inner surface of a stretchable chassis and an absorbent body liner having an inner surface that is uncovered at the longitudinal ends of the absorbent body to permit contact of the absorbent body liner with a wearer of the article at the longitudinal ends of the absorbent body and wherein the absorbent body liner and absorbent body are sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body liner and absorbent body to permit contact of the inner surface of the chassis with the wearer of the article.

Stevens '709 discloses a disposable diaper 10 having an absorbent structure 22 attached to an outer cover 20 that has a back waist flap 26 and a front waist flap 28 that are folded over the respective ends of the absorbent structure to contact the inner surface of the absorbent structure and maintain the absorbent structure in position relative to the outer cover. Thus, to the extent that Stevens '709 can be characterized as having an absorbent body liner (see page 7, line 3 of the Office action in which liner 42 is characterized as an absorbent body liner), the inner surface of the liner at the longitudinal ends of the absorbent body are clearly covered by the folded-over ends of the outer cover and are therefore prevented by the outer cover from contact with a wearer of the article. As noted in the Office action, Stevens also fails to disclose a surge layer disposed between the absorbent body liner and a wrapsheet that wraps about an absorbent core of the absorbent body.

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The Office action relies on Vogt et al. and Bishop et al. as providing sufficient disclosure to render it obvious to provide a surge layer between the absorbent body liner and a wrapsheet of the absorbent body. Neither of these references discloses such an arrangement nor provides any motivation for arranging the surge layer, absorbent body liner and wrapsheet in the recited manner. In any event, both Vogt et al. and Bishop et al. clearly fail to show or otherwise even suggest an absorbent body liner having an inner surface that is uncovered at the longitudinal ends of the absorbent body to permit contact of the absorbent body liner with a wearer of the article at the longitudinal ends of the absorbent body and wherein the absorbent body liner and absorbent body are sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body liner and absorbent body to permit contact of the inner surface of the chassis with the wearer of the article. Note, for example, that the bodyside liner 24 of the absorbent article disclosed by Vogt et al. covers the entire inner surface of the outer cover.

Since each of the cited references fails to disclose such a feature, a combination of the references also fails to disclose this feature. For these reasons, claim 66 as amended herein is submitted to be patentable over the references of record.

Claims 67, 68, and 76-85, depending directly or indirectly from claim 66, are submitted to be patentable over the other references of record for the same reasons as claim 66.

Claim 88

Claim 88 as amended herein is directed to a disposable absorbent article comprising:

a stretchable multilayer chassis having a longitudinal

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axis, a lateral axis, an inner surface, an outer surface, an elastic chassis liner defining the inner surface of the chassis and being stretchable at least laterally, and an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

an absorbent body having an inner surface, an outer surface and longitudinal ends, said absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use, said chassis being stretchable about the wearer independent of the absorbent body; and

at least two leg elastic members spaced laterally from each other and interposed between the elastic outer cover and the elastic chassis liner.

Claim 88 is submitted to be unanticipated by and patentable over the references of record, and in particular Stevens '709 and U.S. Patent No. 4,892,598 (Stevens et al.), in that whether considered alone or in combination the references fail to show or suggest a disposable absorbent article having at least the following:

i) a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface, an outer surface, an elastic chassis liner defining the inner surface of the chassis and being stretchable at least laterally, and an elastic outer cover secured to the chassis liner and defining the outer surface of the chassis, said outer cover being stretchable at least laterally;

ii) an absorbent body having an inner surface, an outer

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surface and longitudinal ends, said absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use, said chassis being stretchable about the wearer independent of the absorbent body; and

iii) at least two leg elastic members spaced laterally from each other and interposed between the elastic outer cover and the elastic chassis liner.

In particular, Stevens '709 and Stevens '598 each fail to teach a disposable absorbent article having at least two leg elastic members spaced laterally from each other and interposed between an elastic outer cover and an elastic chassis liner. Rather, Stevens '709 teaches placing leg elastic members on the inner surface of the outer cover (see, e.g., elastic members 62 in Figs. 11 and 12). As such, the side edges of the outer cover must be folded inward over the leg elastic members. Stevens '598 discloses elastic members 62 adhered directly to the inner surface of the outer cover. See, e.g., Figs. 2 and 3 of Stevens '598.

Accordingly both Stevens '709 and Stevens '598 fail to disclose at least two leg elastic members spaced laterally from each other and interposed between an elastic outer cover and an elastic chassis liner as recited in amended claim 88. Moreover, there is no disclosure found anywhere in the cited references that would motivate one skilled in the art to modify Stevens '709 or Stevens '598 to interpose the elastic members 62 thereof between layers of the outer cover.

For at least these reasons, claim 88 as now presented is submitted to be patentable over the references of record.

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Claims 89 and 90 depend directly from claim 88 and are submitted to be patentable over the references for the same reasons as claim 88.

Claim 89

Claim 89 as amended depends from claim 88 and further recites that the absorbent article also comprises at least one waist elastic member extending longitudinally substantially less than the length of the chassis and interposed between the elastic outer cover and the elastic chassis liner.

The claim is amended to clarify that the at least one waist elastic member is not a layer of a multiple layer outer cover, e.g., superposed over the entire surface of other layers of the outer cover. Rather the length of the at least one waist elastic member (e.g., as measured in the longitudinal direction of the article, i.e., the width direction of the waist elastic member) is less than the length of the article.

Like the leg elastic members of Stevens '709 and Stevens '598, the waist elastic member disclosed by each of these references is also adhered to the inner surface of the outer cover and is therefore not interposed between an elastic outer cover and an elastic chassis liner as recited in amended claim 89.

For these additional reasons, claim 89 is submitted to be patentable over the references of record.

Claims 93 and 94

Claims 93 depend directly from claim 66 and are amended herein in a manner similar to claims 88 and 89, respectively. Accordingly, claims 93 and 94 are further submitted to be

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patentable over the references of record for substantially the same reasons as claims 89 and 90.

Claim 95

Claim 95 as amended herein is directed to a disposable absorbent article comprising:

a stretchable multilayer chassis having a longitudinal axis, a lateral axis, an inner surface, and an outer surface; said chassis being stretchable at least laterally; and

an absorbent body having an inner surface, an outer surface facing the inner surface of the chassis, and longitudinal ends, said absorbent body being affixed along at least a portion of its outer surface to the inner surface of said chassis whereby the inner surface of the absorbent body lies against a wearer of the article during use, the inner surface of the absorbent body being uncovered at the longitudinal ends thereof to permit contact of the absorbent body with the wearer of the article at the longitudinal ends of the absorbent body, the absorbent body being sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body to permit contact of the inner surface of the chassis with the wearer of the article, said chassis being stretchable about the wearer independent of the absorbent body.

Claim 95 is submitted to be unanticipated by and patentable over the references of record, and in particular Stevens '598, in that whether considered alone or in combination the references fail to show or suggest a disposable absorbent article comprising an absorbent body affixed along at least a portion of its outer surface to the inner surface of the chassis, whereby the inner surface of the absorbent body lies against a wearer of the article during use, the inner surface of the absorbent body is uncovered at the

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longitudinal ends thereof to permit contact of the absorbent body with the wearer of the article at the longitudinal ends of the absorbent body, and the absorbent body is sized relative to the chassis such that a portion of the chassis is uncovered by the absorbent body to permit contact of the inner surface of the chassis with the wearer of the article.

Stevens '598 discloses a diaper garment 10 having an absorbent insert 32 held in registration with the outer cover 12 of the garment. In all of the embodiments except for Figs. 3A and 19C of Stevens '598, the longitudinal ends of the outer cover 12 are folded over upon the inner surface of the outer cover and cooperating opposed button or snap type fasteners are secured to the outer cover. The longitudinal ends of the absorbent insert 32 have slots (e.g., slots 50 in Fig. 3) formed therein to permit the opposed fasteners to pass therethrough to secure the absorbent insert in place on the outer cover. As is clearly seen in Figs. 2, 2A, 9-12, 14, 15, 19A and 19B, the ends of the absorbent insert are disposed within the folded ends of the outer cover. Accordingly, the inner surface of the absorbent insert is covered at the longitudinal ends of the insert, and not uncovered as recited in amended claim 95.

In the embodiments of Figs. 3A and 19C of Stevens '598, instead of the ends of the outer cover being folded, a separate strip of material (e.g., strip 58 in Figs. 3A and 19C) has one set of fasteners secured thereto and covers the ends of the absorbent insert 32 for engaging the fasteners with the fasteners on the outer cover. As such, again the inner surface of the absorbent insert is covered, instead of uncovered, at the longitudinal ends of the insert.

Stevens '598 thus fails to anticipate claim 95 as now presented. Moreover, there is no disclosure found in Stevens '598

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nor the other references of record that would motivate one skilled in the art to modify Stevens '598 such that the ends of the insert 32 are uncovered. Indeed, such an arrangement is necessary to arrange the fasteners in opposed relationship with each other while holding the ends of the absorbent insert in place as is specifically taught by Stevens '598.

For the above reasons, amended claim 95 is submitted to be patentable over the references of record.

Claims 45-46, 50-65, 91 and 92 depend directly or indirectly from amended claim 95 and are submitted to be patentable over the references of record for the same reasons as claim 95.

Claims 91 and 92

Claims 91 and 92 depend indirectly from claim 95 and further recite, respectively, the at least two leg elastic members interposed between the outer cover and the chassis liner and the waist elastic member interposed between the outer and the chassis similar to the recitations of claims 89 and 90. Accordingly, claims 91 and 92 are further submitted to be patentable over the references of record for substantially the same reasons as claims 89 and 90, respectively.

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In view of the foregoing, consideration and allowance of claims 45-46, 50-68, 76-85, and 88-95 as now presented is respectfully requested. Applicants do not believe that a fee is due in connection with this response. If, however, the Commissioner determines that a fee is due, he is authorized to charge Deposit Account No. 19-1345.

Respectfully submitted,



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